

**IN THE UNITED STATES DISTRICT COURT  
FOR THE WESTERN DISTRICT OF VIRGINIA  
BIG STONE GAP DIVISION**

UNITED STATES OF AMERICA )  
                                )  
                                )  
                                ) Case No. 2:11CR00004  
                                )  
v.                              )  
                                )  
**CHRISTOPHER MOORE,**     )  
                                ) **OPINION AND ORDER**  
                                )  
                                )  
Defendant.                  ) By: James P. Jones  
                                ) United States District Judge  
                                )

*Christopher Moore, Pro Se Defendant.*

Defendant Christopher Moore, a federal inmate proceeding without counsel, filed a letter dated September 4, 2013 (ECF No. 277), seeking a new trial. Because Moore's letter alleged some constitutional challenges to his conviction, I construed his submission as a Motion to Vacate, Set Aside or Correct Sentence under 28 U.S.C. § 2255. Based on Moore's objection to this construction, I will now dismiss the § 2255 motion without prejudice.

On October 7, 2013, I issued an order, notifying Moore that I had construed his letter as a § 2255 motion, *see Castro v. United States*, 540 U.S. 375 (2003), and that he had 10 days to submit his objection to my construction of his motion as a § 2255 motion or to submit an amended § 2255 motion signed under penalty of perjury. Moore has responded with a written objection. Moore states that he did

not intend, and does not want the court to treat, his letter as a § 2255 motion, because his Petition for a Writ of Certiorari is currently pending before the United States Supreme Court.

In light of Moore's unequivocal objection to construction of his motion as a § 2255 motion, it is **ORDERED** that the § 2255 action (DE 280) is DISMISSED WITHOUT PREJUDICE and stricken from the active docket of the court. Based upon the court's finding that the defendant has not made the requisite showing of denial of a substantial right, a certificate of appealability is DENIED.

The clerk will mail a copy of this Order to defendant.

ENTER: October 23, 2013

/s/ James P. Jones  
United States District Judge